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ABSTRACT

The study examined whether access to tenure review documents or deliberations decreases the degree of selectivity evidenced in tenure decisions. Liberal arts institutions (N=123) were surveyed to determine the relationship between access and tenure selectivity. The first stage of the study was a description of the range of access available in the study population. In order to determine the relationship between access and selectivity, an operational measure of selectivity was developed based on the percentage of individuals granted tenure in a given review cycle and the percentage of a given faculty cohort eventually granted tenure. Results confirm traditional perceptions of tenure review as an extremely closed process which provides the tenure candidate with very limited information about the evaluation which is conducted. The results indicated that increasing degrees or different types of access available to tenure candidates did not predict decreasing selectivity evidenced by the institutions surveyed. Confidential review processes did not appear to be a prerequisite to high selectivity. Conceivably, a balance exists between disclosure that will serve both the candidate's interest in rebutting inaccuracies or falsehoods and in being protected from unnecessary disclosure of negative information; and the reviewer's interest in retaining a reasonable degree of anonymity. (SM)

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TENURE REVIEW OUTCOMES AND THEIR RELATIONSHIP TO OPEN OR CLOSED TENURE REVIEW SYSTEMS

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This paper was presented at the annual meeting of the Association for the Study of Higher Education held at the Ritz-Carlton, Buckhead in Atlanta, Georgia, November 2-5, 1989. This paper was reviewed by ASHE and was judged to be of high quality and of interest to others concerned with the research of higher education. It has therefore been selected to be included in the ERIC collection of ASHE conference papers.

Is the quality of tenure review outcomes diminished if tenure candidates are given access to evaluative comments made by peers? Recently, some individuals denied tenure by academic institutions have challenged tenure decisions through litigation charging discrimination. In these cases, the plaintiffs have sought, and in some instances been granted, access to internal or external peer evaluations, tenure committee records, the files of other tenure candidates, or the voters or reasoning of tenure committee members. Defendant academic institutions have vigorously denounced calls for greater access as potentially harmful to the quality of academic decision making.

Charges of discrimination have not been the sole basis for challenges to confidential review processes. In one instance, a faculty member challenged the confidential process on the basis of the state open-meeting statutes.[1] In University of Alaska v. Geistauts, the Alaska State Supreme Court ruled that all university meetings, including tenure review committee meetings, could, at the request of the faculty member under review, be held in open forum. This decision remains the most invasive approach to increased access. However, most litigation has not asked that open-meeting laws be applied to tenure review. Instead,

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[1] University of Alaska v. Geistauts, 666 P. 2d 424 (Ala. 1983.)

faculty have asked that the court provide access to written documentation of the tenure review process or that peers be required to reveal how they voted in the tenure review.

The controversy surrounding the issue of access to evaluative data is based upon two competing issues. First, defendant academic institutions have argued that peer review conducted in a non-confidential manner will be less candid, and thereby result in diminished selectivity when tenure decisions are made.[2] Faculty, the academic institutions propose, will be less willing to provide thoughtful and critical evaluations of their peers if they know that peers will have access to the reviews. The end result would be harm to the quality of academic tenure decisions. The implication is that individuals who should not be granted tenure will be given tenure based upon the reluctance of their peers to be openly critical.

The second competing argument focuses upon issues of fairness and equity. Advocates of increased access argue that closed review processes increase the chance that inappropriate factors, such as race or sex, could be considered in the tenure decision. Moreover, these individuals contend, if inaccuracies or

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[2]University of Pennsylvania v. Equal Opportunity Employment Commission. Brief of the Petitioner, No. 88-493, June 23, 1989.

falsehoods are part of the tenure decision process, a closed review will not allow the candidate the opportunity to correct error.

No Supreme Court decision addresses the issue of disclosure in peer review. Recently, however, the Court granted certiorari to a case in which access to tenure review materials is being requested.[3] In university of Pennsylvania v. Equal Employment Opportunity Commission(EEOC), the Supreme Court is being asked to finally make a determination as to whether academic institutions may claim that tenure review materials are privileged information which should be kept confidential. In this case, which bears great resemblance to an earlier case, EEOC v. Franklin Marshall, the University of Pennsylvania has asked the court to invalidate a subpoena request for confidential tenure review materials, including the tenure review files for individuals other than the faculty member denied tenure.

Institutions and organizations opposed to the call for access include the University of Pennsylvania, the American Council on Education and the American Association of University Professors. Each of these has presented the Court with amicus curiae briefs in which they claim that increased access to the tenure review

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[3]University of Pennsylvania v. E.E.O.C.

process of the material generated in the process will cause great harm to the pursuit of scholarship in the academy.

> "Any holding that jeopardizes confidentiality in the peer review and deliberative processes of the academic tenure system will undermine that system...The end result will be a breakdown of the tenure system and ill-founded tenure decisions that impair the quality of instruction and scholarship."[4]

QUESTION

Are opponents of increased access correct in their assumption that tenure review which provides candidates with access will result in diminished selectivity in the tenure review outcome?

A clear void exists in data to both 1) describe the degree of access that tenure candidates are provided and to 2) determine the effects of access on tenure selectivity. This study is the first empirical attempt to determine if access to tenure review documents or deliberations does decrease the degree of selectivity evidenced in tenure decisions.

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[4] Brief of the American Council on Education as Amicus Curiae In Support of Petitioner. In University of Pennsylvania v. Petitioner, v. Equal Employment Opportunity Commission. In the Supreme Court of the United States, October Term, 1988, June 23, 1989.

METHOD

In the present study, 123 colleges, termed Liberal Arts 1 institutions under the Carnegie Foundation classification, were surveyed to determine the relationship between access and tenure selectivity. Liberal Arts 1 institutions are defined by this classification system as highly selective, primarily undergraduate institutions that award more than half of their baccalaureate degrees in arts and science fields.[5]

The first stage of this study was description of the range of access available in the population selected for study. Survey of the above institutions was conducted through a survey validated by higher education administrators.

Survey items which measured the type of information shared with tenure candidates were selected to form an OPENINDEX that would rate the degree of access each institution provides tenure candidates. Ten items on the survey were identified as high, medium, and low specificity indicators of access. These ten items formed the basis for the OPENINDEX used to assess the degree of access available to tenure candidates. OPENINDEX scores of zero to thirty are possible.

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[5] Carnegie Foundation. A Classification of Institutions of Higher Education. (Princeton, NJ: The Carnegie Foundation for the Advancement of Teaching, 1987): 31-33.

TABLE 1 - OPENINDEX

RANK ORDERING OF INDICATORS OF ACCESS

IN TERMS OF FREQUENCY

Survey Item	Yes	No	N\A
Link college-level committee comments to individual committee members(high specificity)	14.1%	89.1%	7.6%
Link outside reviewer comments to specific individuals(high specificity)	17.4%	70.6%	11.9%
Link internal peer evaluations to specific individuals(high specificity	23.9%	71.7%	----
Access to evaluations completed by outside reviewers(med specificity)	28.2%	59.7%	11.9%
Access to college-level committee written comments (medium specificity)	29.3%	66.3%	4.3%
Candidate able to review materials added to file (medium specificity)	32.6%	59.7%	7.6%
Access to evaluations written by internal peers (medium specificity)	35.9%	60.9%	3.2%
Candidates meet with college-level committee (low specificity)	46.7%	48.9%	4.3%
Candidate told of identity of outside reviewers(low specificity)	51.1%	36.9%	11.9%
Candidate able to rebut reasons given in a negative decision(low specificity)	64.1%	29.3%	6.5%

TABLE 2 - OPENINDEX CATEGORY DEFINITIONS

I. HIGH SPECIFICITY ITEMS -

Each of these items have a value of 5 points. These items each are representative of review process policies that provide the candidate with information in a format that is attributable to specific individuals.

II. MEDIUM SPECIFICITY ITEMS -

Each of these items have a value of 3 points. These items each are representative of review process policies that provide the candidate with access to review comments or file contents. These comments or file contents are shared in a redacted format that do not allow attribution of comments.

III. LOW SPECIFICITY ITEMS -

Each of these items has a value of 1 point. These items are representative of review process policies that provide the candidate with access to reviewer identity or the ability to have contact with reviewers. However no information regarding the content of evaluations is available.

In order to determine the relationship between access and selectivity, an operational measure of selectivity was necessary. Two measures of tenure rates were used to operationalize selectivity. First, tenure rates can be distinguished as the percentage of individuals who are granted tenure in a give review cycle. This measure was termed the Yearly Rate. Second, tenure rates can be measured as a cohort rate. What percentage of nontenured faculty employed by an academic institution are eventually granted tenure? Chait and Ford emphasize the need to distinguish all faculty who enter the tenure track as a starting cohort from those faculty who actually apply for tenure.[6]

FINDINGS

Of the 123 liberal arts colleges to which the survey was sent, 104 responded in some form for a response rate of 84.5%. A usable response rate of 78% resulted after analysis of returned surveys. The respondents represented all regions of the country, the one public institution, several single sex institutions, and 91 secular and non-secular institutions. The

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[6]Richard P. Chait and Andrew T. Ford, Beyond Traditional Tenure, (San Francisco: Jossey-Bass Publishers, 1982), 144.

high response rate suggests strong interest in the subject of the survey.

The results of the survey confirm traditional perceptions of tenure review as an extremely closed process which provides the tenure candidate with very limited information about the evaluation which is conducted. In this group of colleges, the majority of respondent institutions achieve scores in the lowest end of the index. Fifty-seven percent of the respondent institutions achieved scores of 5 or less out of a possible thirty points. Six of the respondent institutions received scores of zero indicating that none of the OPENINDEX behaviors are exhibited at these institutions. Therefore, tenure candidates in Liberal arts 1 colleges receive very little, if any, information about what their peers are using as the basis for their decision.

TENURE RATES IN LIBERAL ARTS COLLEGES

If the assumption raised by academic institutions is correct, those institutions which do provide tenure candidates with a high degree of access to the tenure review process should also grant tenure at a higher rate than closed institutions. As

noted previously, tenure rates were measured by two methods -- a yearly rate and a cohort rate.

In these respondent institutions, wide variance exists in these measures. The YEARLY RATE, the percentage of individuals who applied for tenure in academic year 1986-76 and were granted tenure, ranged from 33% to 100%. The mean YEARLY RATE was 84%. In forty-two of the institutions, 100% of all individuals who applied for tenure were actually granted tenure.

The COHORT RATE ranged from 28% to 100%, with a mean rate of 74%.

TENURE RATES AND THE OPENINDEX

A variety of statistical tests were applied to determine the relationship between access, as measured by the OPENINDEX, and yearly or cohort tenure rates. First, Pearson product moment correlation, the most stable measure of correlation, was applied.

Correlation of the COHORT RATE, and the OPENINDEX, reveals an extremely low, negative correlation ($r = -0.074$, $N = 79$). If

the basic assumption under examination were correct, a strong positive correlation should exist.

Because the majority of the respondent institutions received a score of 5 or less, those institutions with an OPENINDEX score of 5 or less were removed from the sample to increase the remaining sample's normality. Again, an extremely low correlation exists between the COHORT RATE and OPENINDEX in this restricted sample of LA 1 colleges ($r = .10$, $N = 39$).

Correlation of the YEARLY RATE and OPENINDEX scores was also conducted. The results indicate that the degree of variance in the YEARLY RATE which can be explained by the degree of access provided to tenure candidates is very low with a Pearson product moment correlation of $r = .075$, $N = 80$. This indicates that those institutions which provide candidates with a greater degree of access to the review process are not more likely to grant tenure to a larger percentage of those individuals who apply.

Because a large number of the respondent institutions reported small numbers of individuals applying for tenure in the academic year 1986-87, the sample of respondent institutions was again subgrouped in order to control for non-systematic

variance. Pearson product moment correlation was again applied to this remaining sample. An extremely low, nonsignificant correlation, $r = -.078$, $N = 47$, was produced between these two variables.

DISCUSSION

Based upon the widespread assumption that selectivity requires confidentiality, defendant academic institutions in the previously discussed litigation have asserted a need to keep tenure review proceedings and the documents from these confidential. Academic institutions have claimed that the very academic freedom of higher education is challenged by calls for increased disclosure in the review process. However, this study repudiates that assumption. The degree of selectivity evidenced in these institutions is <u>not</u> related to the degree of access available to tenure candidates. Liberal Arts I colleges that provide candidates with a high degree of access do not evidence decreased selectivity when granting tenure.

Indeed, no matter how the relationship is tested, the results indicate that increasing degrees or different types of access do not predict decreased selectivity in tenure rates. Or to put it in reverse form, the data indicate conclusively that confidential tenure review processes do not increase the degree of selectivity exercised by the college.

Moreover, although the population of institutions studied here are small, liberal arts colleges, the findings are significant to a wide variety of types of institutions. In these small colleges, issues of confidentiality or collegial relationships are more acute than those experienced in large, research universities. If the issue of access were to have an effect on selectivity it would be more acutely felt in smaller institutions in which all faculty work together closely.

In the previously discussed University of California suit, the university counsel echoed claims usually raised by defendants. She noted:

> "The issue of confidentiality is crucial; otherwise, we wouldn't fight so hard. We certainly recognize that the individual has some interests here, but the university has a more compelling interest, we believe."[7]

That compelling interest she cites is in selective review processes that defendants assume are possible only under conditions of confidentiality -- an assumption which is no longer valid.

Confidential review processes, therefore, are not a prerequisite to selectivity. In fact, the only test of these relationships that approaches significance appears to indicate that colleges that provide high degrees of access to the tenure

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[7] McMillen. "U. of California Professors." 18.

review process may be even more likely to achieve more selective tenure rates. Moreover, the assumption that confidentiality is prerequisite to selectivity often discounts or ignores the harm that can accrue in closed, confidential decision processes. Confidential review processes may well decrease the quality of decisions as well as adversely affect candidates. Review conducted in a closed, confidential manner can increase the potential for inaccuracies, unchecked biases, or procedural inequities. Review processes that provide the candidate with a clear indication of the reasoning behind the decision will allow the candidate, and the institution, to be protected from decisions derived from inaccurate information, unsubstantiated assertions, or hearsay. Candidates will have the opportunity to correct inaccuracies or misinterpretations. Moreover, selectivity might actually be increased by allowing better understanding of the basis for tenure review decisions. The data gathered in this study suggest this may occur. Decision makers in an open review process are more likely to reach decisions based upon a candidate's merit because they are more likely to raise concerns that can be substantiated. Decisions that are based upon substantiated assessments of candidate productivity or scholarship are also more likely to be legally defensible. In fact, in Gray, the Seventh Circuit Court noted that the institution might have been protected from discovery requirements

had the candidate been provided with a "meaningful written statement of reasons" for the decision,[8] a recommendation from the American Association of University Professors (AAUP) statement on procedural standards.

Conceivably, a balance exists between disclosure that will serve the following concerns: the candidate's interest in rebutting inaccuracies or falsehoods, the candidate's interest in being protected from unnecessary disclosure of negative information, and the reviewer's interest in retaining a reasonable degree of anonymity. Candidates should have access to the reasoning for decisions. Access to recommendations, evaluations, or external reviews provide candidates with information about the reasons for a decision. In addition, candidates should have the opportunity engage in meaningful rebuttal.

This study does not provide a definitive evaluation as to whether access has limits beyond which negative effects occur. This study only provides clear evidence that confidentiality does not assure selective tenure outcomes. If limits to access turn out to be necessary, it is unclear where the limits should be

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[8] Gray v. Board, 907. See also American Association of University Professors, "A Preliminary Statement on Judicially Compelled Disclosure in the Nonrenewal of Faculty Appointments." Academe, 67, no. 1, (Feb/Mar 1981): 27.

placed. This issue remains to be tested through further research on the issues surrounding tenure review.